

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
EASTERN DIVISION

No. 4:12-CR-30-H  
No. 4:13-CV-241-H

OZAY RICHARDSON,  
Petitioner,

v.

UNITED STATES OF AMERICA,  
Respondent.

**ORDER**

This matter is before the court on petitioner's motion to vacate pursuant to 28 U.S.C. § 2255. [D.E. #41 and #46]. The government filed a motion to dismiss, and this matter was dismissed in part and referred in part to United States Magistrate Judge Kimberly A. Swank. On October 20, 2015, Judge Swank entered a memorandum and recommendation ("M&R") recommending dismissal of petitioner's motion to vacate under 28 U.S.C. § 2255. Petitioner filed an objection, and in response the government filed a motion to stay on February 29, 2016 pending the decision by the United States Supreme Court in Welch v. United States, \_\_ U.S. \_\_, No. 15-6418, 2016 WL 1551144 (U.S. Apr. 18, 2016).

In Welch, the Supreme Court deemed its decision in Johnson v. United States, 135 S.Ct. 2551 (2015), retroactively

applicable on collateral review. In light of Welch, the government filed a notice and response on April 21, 2016, changing its position and waiving any procedural defenses. The government consents to the court granting petitioner's motion to vacate in light of Welch and Johnson and scheduling a resentencing hearing. [D.E. #67].

The court hereby LIFTS the stay in this case. Based on good cause shown and the consent contained in the government's notice and response:

1. The court DECLINES to adopt the recommendation in the M&R. [D.E. #60];

2. The government's Motion to Dismiss, [D.E. #48], is DENIED;

3. Petitioner's Motion to Vacate his sentence under 28 U.S.C. § 2255, [D.E. #41 and #46], is GRANTED; and

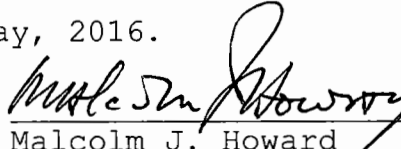
4. The judgment, [D.E. #38], is VACATED.

This matter is SCHEDULED for resentencing at the court's **June 14, 2016, criminal term**. Petitioner shall remain in custody pending the resentencing hearing. The United States Probation Office is DIRECTED to provide the parties and the court with a resentencing memorandum.

Furthermore, CJA Appointed counsel is DIRECTED to continue representing petitioner in accordance with Standing Order 15-SO-

2. The clerk is DIRECTED to serve a copy of this order upon the United States Probation Office.

This 2<sup>nd</sup> day of May, 2016.

  
\_\_\_\_\_  
Malcolm J. Howard  
Senior United States District Judge

At Greenville, NC  
#34